IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4527 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KADI MUNICIPALITY - Petitioner(s)

Versus

SUMITRABEN RAMESHCHANDRA PATEL - Respondent(s)

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Appearance :

MR DIPAK R DAVE for Petitioner(s) : 1,
MR DJ BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/01/2006

ORAL JUDGMENT

1. This petition is directed against the order of the Labour Court, Kalol in Recovery Application No.171/97 passed under section 33(c)(2) of the Industrial Disputes

Act whereby the Labour Court has directed the petitioner to pay Rs.9377.15 ps to the respondent towards overtime amount.

2. The short facts of the case are that the respondent was working with the petitioner. The respondent was made wrong payments and on coming to know about the same, an order was passed to recover the same. Ultimately such amount was recovered from the gratuity amount of the respondent. The respondent, therefore, filed Recovery Application No.171/97 under section 33-C(2) of the Act before the Labour Court, Kalol, which passed the aforesaid award.

3. In Special Civil Application No.9755 of 2001, filed by the very same petitioner i.e. Kadi Municipality, this Court has passed judgement on 21.1.2002 wherein in paragraphs 2 and 3 it is stated as under:

> 2. The present petition is filed by Kadi Municipality challenging the order passed by the Labour Court, Kalol in Recovery Application No.197 of 1997 dated 2.6.2001. The respondent workman filed a recovery application claiming that the petitioner be paid an amount of Rs.9350.05 paise which is wrongly deducted from the legally payable amount to the workman as the amount for

overtime wages. He also claimed that he should be paid an amount of Rs.7632.85 paise which too is wrongly deducted from the amount payable to the petitioner towards the amount payable on account of additional charge held by the respondent workman. It is the case of the petitioner that these amounts are deducted from the difference of pay payable to the respondent workman on account of new Pay Commission and the amount of gratuity. The respondent workman has also prayed for retrenchment compensation for his service of 28 years including one month's notice amounting to Rs.43,999/- and difference of gratuity amount of Rs.7302/-. The total of these amounts comes to Rs.68,274.90 paise. The learned Judge though was conscious of the scope of the application under section 33(C)(2) of the Industrial disputes Act, 1947 (hereinafter referred to as "the Act") came to the conclusion that so far as the amount of gratuity, i.e.Rs.7302/- is concerned the respondent workman is required to make an application to the appropriate authority under the Payment of Gratuity Act. The learned Judge also held that so far the retrenchment compensation is concerned the respondent workman is not entitled to that. But so far as the other two amounts, i.e. Rs.9350.05 paise and Rs.7632.85 paise which are deducted by the petitioner Municipality from the legally payable amount which admittedly was that of the gratuity is wrongly deducted by the Municipality. The amount of Rs.9350.05 paise was the amount which was already paid to the respondent workman as overtime wages. But the petitioner Municipality's case is that it was wrongly paid as noted in the auditor's report. So far as the amount of Rs.7632.85 paise is concerned the same was paid towards additional charge allowance and that was also wrongly paid as noted in the auditor's report. The learned Judge though conscious that if towards gratuity any amount is less paid, an application agitating such grievance cannot be entertained by the Labour Court under section 33(C)(2) of the Act and an application under Payment of Gratuity Act is required to be filed. The learned Judge came to the conclusion that as the amount already paid to the respondent workman is sought to be recovered, he ordered payment of these two amounts in an application under sec.33(C)(2) of the Act overlooking the fact that the net effect was the gratuity amount otherwise payable to workman was paid less.

3. The learned Judge erred in overlooking the aspect of the matter that the amount which was payable to the respondent workman was nothing but the gratuity amount and from that amount if any amount even assuming that it is wrongly deducted, a complaint would lie to the Gratuity Authority. In those proceedings petitioner Municipality will have an opportunity to plead that it had valid reason to deduct the same."

4. Against the aforesaid decision LPA was filed which came to be dismissed.

5. The issue raised in this petition whether the Labour Court was right in awarding the amount without proper adjudication or not. The said issue is covered by the decision reported in the case of G.W.S.S. Board V. K.D. Pandya, reported in 2003(3) GLR 2281 wherein it is held that recovery application to Labour Court directly not maintainable under section 33C(2).

6. In the premises aforesaid, the petition is allowed. The impugned order is quashed and set aside. It would be open to the respondent to claim the dues before the appropriate authority under the Act. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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